

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

DEC 22 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0297-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
ESTEBAN MALDONADO ARMENTA,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20101672001

Honorable Christopher C. Browning, Judge

REVIEW GRANTED; RELIEF DENIED

\_\_\_\_\_  
Esteban Maldonado Armenta

\_\_\_\_\_  
Kingman  
In Propria Persona

\_\_\_\_\_  
K E L L Y, Judge.

¶1 Petitioner Esteban Armenta seeks review of the trial court’s order denying his of-right petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., in which he alleged there was an insufficient factual basis for his guilty plea. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Armenta has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Armenta was convicted of one count of aggravated robbery and one count of criminal damage. The trial court imposed a “slightly aggravated term” of 5.5 years imprisonment on the robbery count and a concurrent, presumptive, 1.5-year sentence on the criminal damage count. Armenta thereafter petitioned for post-conviction relief, arguing “a factual basis for each element of aggravated robbery was not established.” The court summarily denied relief.

¶3 On review, Armenta reasserts the argument he made below, maintaining “there exists no evidence that the defendant threatened or used force against the victim with intent to coerce surrender of the vehicle” that was the subject of the robbery or that he “prevent[ed] the victim from resisting against [his] taking the vehicle.” We disagree. As the trial court concluded, “strong evidence existed to support each element of robbery,” including the intent element Armenta challenges. As the court pointed out, Armenta’s plea agreement specifically provided: “In addition to the factual basis and *mens rea* provided by the defendant, the Grand Jury . . . Transcript is hereby expressly incorporated within the factual basis required.” An Oro Valley police officer testified before the grand jury that the victim had “actually [been] pulled from the vehicle, out the

window,” before being assaulted and “knocked unconscious,” after which point Armenta took the vehicle. This was more than adequate evidence from which the court could find that Armenta had used force in order to obtain the vehicle. *See* A.R.S. § 13-1902 (“A person commits robbery if in the course of taking any property of another from his person . . . and against his will, such person . . . uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property.”).

¶4 Armenta is correct that in determining whether a guilty plea is voluntary and intelligent, a court must “determine that there is a factual basis for the plea.” Ariz. R. Crim. P. 17.3. But, “[a] factual basis can be established by ‘strong evidence’ of guilt and does not require a finding of guilt beyond a reasonable doubt.” *State v. Salinas*, 181 Ariz. 104, 106, 887 P.2d 985, 987 (1994), *quoting State v. Wallace*, 151 Ariz. 362, 365, 728 P.2d 232, 235 (1986). Indeed, under certain circumstances, the requisite basis may be established even when a defendant denies his guilt. *State v. Moreno*, 16 Ariz. App. 191, 193, 492 P.2d 440, 442 (1972); *see also North Carolina v. Alford*, 400 U.S. 25 (1970). To the extent that Armenta argues his own assertion at his change of plea hearing—that the victim had gotten out of the vehicle—provided arguably contradictory evidence on the question of intent, that assertion does not change the fact that sufficient evidence existed to establish a factual basis for the plea. *See Salinas*, 181 Ariz. at 107, 887 P.2d at 988; *cf. State v. Johnson*, 181 Ariz. 346, 349, 890 P.2d 641, 644 (App. 1995) (“A factual basis is required for the purpose of shielding the innocent from conviction, rather than to

provide a back-door for defendants to obviate finality by challenging their guilty pleas.”).

Therefore, although we grant the petition for review, we deny relief.

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge